



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 11271632

Date: OCT. 16, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner seeks to employ the Beneficiary as a marketing director under the second-preference, immigrant classification for members of the professions with advanced degrees or their equivalents. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

The Director of the Texas Service Center denied the petition and a subsequent motion to reconsider, concluding that the record did not establish that the Beneficiary possessed a bachelor's degree in a field of study required for the offered position. On appeal, we withdrew the Director's decision and remanded the matter for consideration of other potential grounds for denial. On remand, the Director issued a request for evidence, to which the Petitioner did not submit a response. The Director denied the petition due to abandonment. The Director also dismissed three subsequent motions to reopen and/or reconsider the matter. The matter is now before us based on an appeal filed by the Beneficiary.

Upon review, we will reject the appeal.

The record lacks evidence that the Petitioner filed the appeal, or that the Beneficiary had standing to file the appeal. The Beneficiary signed the Form I-290B, Notice of Appeal or Motion, and the accompanying Form G-28, Notice of Entry of Appearance, authorizing counsel to represent her.

Beneficiaries generally cannot file appeals or motions in visa petition proceedings. *See* 8 C.F.R. § 103.3(a)(1)(iii)(B) (excluding a beneficiary of a visa petition as an "affected party"). U.S. Citizenship and Immigration Services (USCIS), however, treats beneficiaries as affected parties if they are eligible to "port" under section 204(j) of the Act, 8 U.S.C. § 1154(j), and properly request to do so. *See Matter of V-S-G- Inc.*, Adopted Decision 2017-06, *14 (AAO Nov. 11, 2017).

In *V-S-G-*, we held that portability-eligible beneficiaries may participate *in revocation proceedings* if they have qualifying new job offers of which USCIS received notice. *Id.* (emphasis added). However, these are not revocation proceedings. Here, the Director determined that the petition had been abandoned and denied the petition pursuant to 8 C.F.R. § 103.2(b)(13).¹

¹ In her first motion to reopen and reconsider, counsel for the Beneficiary states, "The Beneficiary was advised by her previous counsel that a response to the Request for Evidence could not be filed because the petitioning company would

Because the Beneficiary has not established that she has standing to file the appeal, the appeal must be rejected. 8 C.F.R. § 103.3(a)(1)(iii)(B).²

ORDER: The appeal is rejected.

not be able to show that it had the financial ability to pay the salary offered ... However, he did not advise her that she had the opportunity to ‘port’ her application to another company pursuant to INA 204(j).” As discussed above, however, the instant petition was never approved, and based on the statement from counsel, the Petitioner was not able to establish eligibility for the benefit. Thus, the petition was never approved or valid for portability purposes. *See Herrera v. USCIS*, 571 F.3d 881, 887 (9th Cir. 2009) (explaining that, “in order for a petition to ‘remain’ valid, it must have been valid from the start”); *see also Matter of Al Wazzan*, 25 I&N Dec. 359, 367 (AAO 2010) (holding that a beneficiary of a portable petition must have been “entitled” to the requested classification).

² Pursuant to under 8 C.F.R. § 103.2(b)(15), a denial due to abandonment cannot be appealed. Here, prior to filing the appeal, the Beneficiary filed two motions to reopen and reconsider the Director’s decision, and a third motion to reopen. The Director concluded that the motions did not meet applicable requirements and dismissed each. On Form I-1290B, Part 2.3, the Beneficiary lists the receipt number of the underlying Form I-140 as the petition or application that is the subject of the appeal, rather than the Director’s latest decision dismissing the motion to reopen. Because the appeal is filed by the Beneficiary who is not an affected party under 8 C.F.R. § 103.3(a)(1)(iii)(B), we need not address whether the appeal might also be rejected under 8 C.F.R. § 103.2(b)(15).